

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 RYAN D. MALONE,

9 Defendant.

Case No. 1:14CR438
Youngstown, Ohio
Friday, March 6, 2015
9:21 a.m.

10 TRANSCRIPT OF CHANGE OF PLEA HEARING
11 BEFORE THE HONORABLE GEORGE J. LIMBERT
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Government: Mary Kendra Klump
15 Office of the U.S. Attorney - Cleveland
16 Carl B. Stokes U.S. Courthouse
801 Superior Avenue, West, Suite 400
Cleveland, Ohio 44113
(216) 622-3600

17 For the Defendant: Darin Thompson
18 Office of the Federal Public Defender
19 Skylight Office Tower, Suite 750
1660 West Second Street
Cleveland, Ohio 44113
(216) 522-4856

20 Court Reporter: Caroline Mahnke, RMR, CRR
21 Federal Building & U.S. Courthouse
22 2 South Main Street, Suite 568
Akron, Ohio 44308
23 (330) 252-6021

24 Proceedings recorded by ECRO; transcript produced by
25 computer-aided transcription.

Friday, March 6, 2015

THE DEPUTY CLERK: This Court is open for the transaction of business. The Honorable George J. Limbert presiding.

THE COURT: Please be seated.

THE DEPUTY CLERK: Court calls Case Number
1:14CR438, United States of America versus Defendant Number
1, Ryan D. Malone.

THE COURT: I have been informed that Mr. Malone wishes to plead guilty to the charges presented.

Is my understanding correct?

MR. THOMPSON: Yes, Your Honor.

THE COURT: I understand the defendant has consented to have a magistrate judge receive his plea.

Is that correct?

MR. THOMPSON: Yes, Your Honor.

THE COURT: You don't have to stand every time.

MR. THOMPSON: Thank you, Your Honor.

THE COURT: Mr. Malone, is that your signature on the consent to order of referral to a magistrate judge for purposes of receiving your plea of guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you discussed this consent with your attorney?

THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand that you have a
2 right to offer your guilty plea to a federal district judge?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that by giving this
5 consent to my jurisdiction you give up the right to offer
6 your guilty plea to the federal district judge?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you still wish to proceed with
9 your plea before me?

10 THE DEFENDANT: Yes.

11 THE COURT: The purposes of this proceeding are
12 as follows: Number one, to establish that you are competent
13 to make a plea; number two, to make sure that your plea is
14 free and voluntary; number three, to be certain that you
15 understand the charges asserted against you, the maximum
16 penalties for those charges, and the constitutional rights
17 that you are giving up by pleading guilty; number four, to
18 determine that there is a factual basis for the plea; and
19 number five, to receive your plea.

20 Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. Ms. Klump, have the victims
23 been provided notice of this plea hearing pursuant to the
24 Justice for All Act?

25 MS. KLUMP: The only victims here are society in

1 general, Your Honor.

2 THE COURT: Okay.

3 Before I accept your guilty plea there are a number of
4 questions the Court will ask you to assure that it is a
5 valid plea. If you do not understand any of the questions
6 or at any time wish to consult with your attorney, please
7 say so since it is essential to a valid plea that you
8 understand each question before you answer.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Would you please raise your right
12 hand?

13 (The Defendant was sworn in.)

14 THE COURT: Do you understand that having been
15 sworn, your answers to the Court's questions may be used
16 against you in a later prosecution for perjury or making a
17 false statement if you do not answer truthfully?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Would you please state your full
20 name?

21 THE DEFENDANT: Ryan DeAngelo Malone.

22 THE COURT: State your age.

23 THE DEFENDANT: Twenty-seven.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: To the eleventh grade.

1 THE COURT: Okay. You never got a GED?

2 THE DEFENDANT: Yes, I did receive my GED.

3 THE COURT: Okay. Are you a U.S. citizen?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you able to speak and understand
6 English?

7 THE DEFENDANT: Yes.

8 THE COURT: Counsel, have you been able to
9 communicate with the defendant?

10 MR. THOMPSON: Yes, Your Honor.

11 THE COURT: Have you ever been treated for any
12 mental illness or addiction to narcotic drugs of any kind?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Would you explain?

15 THE DEFENDANT: I received treatment for -- NA,
16 in regards to a marijuana addiction I once had.

17 THE COURT: But that treatment has been
18 completed?

19 THE DEFENDANT: Yes.

20 THE COURT: How long ago was that treatment?

21 THE DEFENDANT: 2011.

22 THE COURT: Okay. Have you taken any drugs or
23 medication or alcoholic beverage of any kind within the past
24 24 hours?

25 THE DEFENDANT: No.

1 THE COURT: Do either of you have any reason to
2 doubt the defendant's competence to plead at this time?

3 Ms. Klump.

4 MS. KLUMP: No, Your Honor.

5 THE COURT: Mr. Thompson.

6 MR. THOMPSON: No, Your Honor.

7 THE COURT: Do you realize that you have a right
8 to be represented by an attorney at every stage of your case
9 and if you cannot afford to hire your own counsel, one will
10 be provided?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Have you received a copy of the
13 indictment?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you had ample opportunity to
16 discuss the charge with your attorney?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Have you told your counsel everything
19 you know about this case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has Mr. Thompson fully informed you
22 of the facts and circumstances which form the basis for the
23 charge in the indictment and any defenses you might have?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Did he tell you about his discussions

1 with the attorney for the government?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is your willingness to plead guilty
4 the result of discussions that your attorney has had with
5 the attorney for the government?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Are you satisfied with your
8 attorney's representation and advice given to you in this
9 case?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Let me go over the elements of the
12 charge with you as I am required to do so by law.

13 Did Mr. Thompson explain to you each and every
14 essential element of the charge for which you are proffering
15 this plea of guilty?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Just bear with me for one
18 minute. I'll be right back.

19 (Pause.)

20 THE COURT: You have pleaded guilty to Count 1 of
21 the indictment charging you with being a felon in possession
22 of a firearm and ammunition in violation of 18 U.S.C.,
23 Section 922(g) (1) .

24 In order to sustain its burden of proof for being a
25 felon in possession of a firearm and ammunition, the

1 government must prove the following essential elements
2 beyond a reasonable doubt:

3 You have been convicted in any court of a crime
4 punishable by imprisonment for more than one year, those
5 being felon in possession of firearm in Case Number
6 1:06CR306 in United States District Court for the Northern
7 District of Ohio on or about January 3, 2007, and drug
8 trafficking with schoolyard and firearm specifications in
9 Case Number CR-06-483164 in the Cuyahoga County Court of
10 Common Pleas on or about January 5, 2007.

11 After these convictions, you knowingly possessed the
12 firearm and ammunition specified in Count 1 of the
13 indictment, and the firearm and ammunition had moved in or
14 affected interstate commerce, that is, it crossed a state
15 line prior to your possession.

16 Do you understand the elements and nature of the
17 charge?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay.

20 Do you understand that Count 1 requires that you serve
21 a maximum penalty of ten years imprisonment plus a fine of
22 \$250,000 or both?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that Count 1 is
25 probationable and you will be eligible for a sentence of

1 probation. You could receive up to five years probation but
2 not less than one year.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: In addition, the Court may include a
6 term of supervised release of three years. Supervised
7 release is a term of supervision in addition to and
8 following any term of imprisonment imposed by the Court.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you further understand that if the
12 Court finds you have violated a condition of supervised
13 release, it may send you back to prison for up to two years
14 regardless of how much of your term of supervised release
15 you served before you violated a condition.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that if the Court
19 sends you back to prison for less than two years, it may
20 impose a further term of supervised release following
21 imprisonment.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: In addition there is a \$100 special
25 assessment which shall be imposed and is due and payable at

1 the time of sentencing.

2 You may be required to pay the cost of imprisonment or
3 supervised release or probation, if granted.

4 You may be required to forfeit certain property to the
5 government.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand the Court will not
9 be able to determine your sentence for your case until after
10 the presentence report has been completed?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Have you and your attorney talked
13 about how the Sentencing Commission Guidelines might apply
14 to your case?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that the Sentencing
17 Commission Guidelines are no longer mandatory? In other
18 words, the district judge is not bound to apply the
19 guidelines. However, the guidelines are advisory and she
20 must calculate the applicable guideline range and take that
21 into account when she imposes a sentence. She must also
22 consider possible departures under the guidelines or any
23 other sentencing factors under 18 U.S.C., Section 3553(a).

24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand that parole has
2 been abolished and that if you are sentenced to prison you
3 will not be eligible for early release on parole?

4 Do you understand that?

5 THE DEFENDANT: Can I have a moment to speak with
6 my counsel?

7 (Pause.)

8 MR. THOMPSON: We can go forward, Your Honor.

9 THE COURT: Okay. Do you understand that, that
10 parole has been abolished?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Has anyone made any prediction
13 or prophecy or promise to you as to what your sentence may
14 be?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Has your attorney given you any
17 estimate or projection as to what your sentence may be? Has
18 he talked to you about a potential sentence?

19 THE DEFENDANT: One moment, Your Honor.

20 (Pause.)

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand you will not be
23 able to withdraw your plea if the sentence imposed is
24 different from any estimate your attorney may have given
25 you?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. What did you do in connection
3 with the acts charged in Count 1 of the indictment?

4 THE DEFENDANT: One moment.

5 On November 4, 2014, I did knowingly possess the
6 firearm that is described in the indictment.

7 THE COURT: Okay. What in summary would be the
8 government's evidence as to this count?

9 MR. KLUMP: Thank you, Your Honor.

10 The government, if the case proceeded to trial, would
11 prove, among other things, beyond a reasonable doubt that
12 Mr. Malone, on November 4 of 2014, in Maple Heights, Ohio
13 which is here in the Northern District of Ohio, Eastern
14 Division, did knowingly possess a loaded Glock Model 19 .9
15 millimeter semiautomatic pistol, serial number
16 Frank-Zebra-Robert-569.

17 Prior to that time the defendant had been previously
18 convicted of felonies punishable by more than one year. The
19 first being on or about January 3, 2007, Mr. Malone was
20 convicted of felon in possession of a firearm in Case Number
21 1:06CR306 here in the Federal Court for the Northern
22 District of Ohio. Also on January 5 of 2007, Mr. Malone was
23 convicted of drug trafficking with schoolyard and firearm
24 specifications. That was in the Cuyahoga County Court of
25 Common Pleas in Case Number CR-06-483164.

1 And finally, Your Honor, the government would
2 establish that both the firearm and the ammunition possessed
3 by Mr. Malone were manufactured outside the State of Ohio
4 and therefore traveled in interstate commerce prior to his
5 possession.

6 THE COURT: Does counsel agree with the summary?

7 MR. THOMPSON: Yes, Your Honor.

8 THE COURT: Do you agree with the prosecutor's
9 summary of what you did?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Is there anything that she stated
12 that was not correct?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: The Court finds a factual basis for
15 the plea.

16 Do you understand that you have a right to a jury
17 trial? That is your right to have 12 people from the
18 community decide your case.

19 In order to return a verdict against you, all 12
20 jurors would have to agree upon their verdict and the
21 verdict would have to be unanimous.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you further understand that if you
25 went to trial, you would be entitled to the presumption of

1 innocence which means that you do not have to prove that
2 you're innocent. In other words, you do not have to prove
3 to those 12 jurors that you did not commit the crime. That
4 is up to the government to prove.

5 Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You have a right to require the
8 government to prove each and every element of the charge
9 beyond a reasonable doubt. And if the government fails to
10 prove any one element of the charge, or one or more of the
11 charges, you must be found not guilty of the charge or any
12 one of the charges that the government could not prove all
13 of the elements.

14 And if you went to trial, you would have the right to
15 confront the witnesses presented by the government, which
16 means you would have the right to cross-examine and
17 challenge the testimony of the witnesses that would testify
18 against you.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you further understand that in a
22 criminal case the burden of proof never shifts to the
23 defendant, that there is no burden on you to prove your
24 innocence, that if you went to trial you could not be
25 compelled to take the witness stand and testify against

1 yourself, and that the government could not comment on your
2 refusal or failure to testify?

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: However, if you decided to call
6 witnesses to testify in your behalf, you would have the
7 right to compulsory process which is simply your right to
8 compel the presence of any witnesses you want to call at
9 trial through the subpoena power of the Court.

10 Do you understand that each of these trial rights are
11 waived if the district judge accepts your guilty plea?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Finally, if you went to trial and you
14 were found guilty, you would have the right to appeal your
15 conviction. This is an absolute right. And if you are
16 unable to hire an attorney to represent you on appeal and it
17 is determined that you're indigent, the Court would appoint
18 a lawyer to represent you. If you cannot afford to pay the
19 cost of filing your appeal, the Court would grant you 14
20 days within which to file your appeal without paying the
21 cost.

22 Do you understand that you're giving up those
23 appellate rights as well when you enter a plea of guilty?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: If you went to trial and you were

1 convicted, you would have the right to appeal the merits of
2 your case. Ordinarily you have the right to challenge your
3 conviction by filing an appeal or a writ of habeas corpus if
4 you believe that your guilty plea was somehow unlawful or
5 involuntary.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You also have a statutory right to
9 appeal your sentence under certain circumstances,
10 particularly if you think the sentence is contrary to law.
11 The government also has a right to appeal the sentence if it
12 believes it is contrary to law.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Has anyone made any promises that
16 induced you to plead guilty?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Has anyone threatened or forced you
19 in any way to plead guilty?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Having discussed your rights with
22 you, do you still want to plead guilty?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Please state your plea.

25 THE DEFENDANT: Guilty.

1 THE COURT: Are you pleading guilty to the
2 offense because you are in fact guilty of the offense
3 charged in Count 1 of the indictment?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: The Court having fully advised the
6 defendant of the effect of his plea finds that he's
7 competent and also finds the plea to have been freely and
8 voluntarily made with full knowledge of the consequences.

9 And since defendant has acknowledged that he is in
10 fact guilty of the charge, I recommend that the district
11 judge accept the plea of guilty and adjudge the defendant
12 guilty of the offense charged in Count 1 of the indictment.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: This matter is continued pending a
16 presentence investigation and report.

17 Mr. Malone, you will be asked to give information for
18 the report at which time your attorney may be present if you
19 so desire.

20 The Court will permit you and your counsel to read the
21 presentence report before the sentencing hearing, and you
22 can make objections or request corrections that you think
23 are appropriate.

24 And of course you and your attorney will have an
25 opportunity to speak at the sentencing hearing.

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Sentencing is scheduled
4 before Judge Pearson on June 16, 2015 at 10:00 a.m.

5 That's June 16, 2015 at 10:00 a.m.

6 Okay? Anything further from defense counsel?

7 MR. THOMPSON: Nothing, Your Honor. Thank you.

8 THE COURT: Anything further from the government?

9 MS. KLUMP: No, Your Honor. Thank you.

10 THE COURT: The defendant is remanded to the
11 custody of the U.S. Marshal until sentence, and we are
12 adjourned.

13 THE DEPUTY CLERK: All rise.

14 (Proceedings concluded at 9:41 a.m.)

15

16 C E R T I F I C A T E

17

18 I certify that the forgoing is a correct
19 transcript from the record of proceedings in the
20 above-entitled matter.

21

22 S/Caroline Mahnke 3/12/15

23 Caroline Mahnke, RMR, CRR Date

24

25